PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security

Bureau of Citizenship Services and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: LIN 02 106 52482 Office: Nebraska Service Center Date: MAY 28 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a metal stamping--fineblanking operation. It seeks to employ the beneficiary permanently in the United States as a tool and die maker. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary meets the job requirements listed on the Form ETA 750.

On appeal, the petitioner submits an explanation of the requirements of the proffered position.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Furthermore, 8 CFR 204.5(l)(3)(ii) states, in pertinent part:

> (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation.

Eligibility in this matter hinges on the petitioner demonstrating that the beneficiary was qualified for the proffered position on the priority date, the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the request for labor certification was accepted for processing on May 31, 2000. The labor request clearly states that the requirements of the position include two years of college with a major field of study in machine tool technics (sic).

With the petition, counsel submitted no evidence that the petitioner attended college. Because the evidence submitted did not demonstrate that the beneficiary possesses the requisite

education listed on the Form ETA 750, the Director, Nebraska Service Center, on April 3, 2002, requested evidence of the beneficiary's education.

In response, the manager of the petitioner's human resource division submitted evidence of the petitioner's experience and apprenticeship, but no evidence to demonstrate that the petitioner attended two years of college. The petitioner's manager also submitted an occupation analysis from three instructors at the Madison Area Technical College. That analysis states that the beneficiary's experience surpasses the training received in two years of college instruction at that college.

On August 19, 2002, the Director, Nebraska Service Center, denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the education specified on the Form ETA 750.

On appeal, the petitioner implied that college education is unnecessary to the proffered position and that the college education requirement was placed on the Form ETA 750 by mistake.

For a petition to be approvable, the petitioner must establish eligibility on the filing date. A petition will not be approved because the petitioner or beneficiary subsequently became eligible. *Matter of Katigbok*, 14 I&N Dec. 45, 49 (Comm. 1971). Further, a petitioner may not make material changes to a petition that has already been filed in an effort to render a deficient petition approvable. *In re Izummi*, 22 I&N Dec. 169, 175.

The petitioner is unable to change the educational requirement clearly stated on the approved Form ETA 750. The Form ETA 750 states that the proffered position requires two years of college and makes no allowance for equivalent work experience.

The evidence submitted does not demonstrate that the beneficiary has the education required by the Form ETA 750. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position and the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.